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MAY 15 2009

OFFICE OF PETITIONS

In re Application of	:	
Krzysik et al.	:	
Application No. 10/659,967	:	LETTER REGARDING PTA
Filed: September 11, 2003	:	
Attorney Docket No.	:	
19834 (27839-1294)	:	

This letter is in response to the "LETTER REGARDING ERROR IN PATENT TERM ADJUSTMENT", filed on November 8, 2008. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. § 154(b) be reviewed for accuracy insomuch as the patent term adjustment should be reduced by 1 days from 669 days to 668 days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED in part**. The determination of PTA at the time of the mailing of the Notice of Allowance is six hundred forty-one (641) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is 641 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 23, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 669 days.

Applicants filed the instant "LETTER REGARDING ERROR IN PATENT TERM ADJUSTMENT" on November 8, 2008.

On November 14, 2008, the issue and publication fees were paid. Accordingly, the subject letter was timely filed in accordance with 37 CFR 1.705(b).

The Office determined a patent term adjustment of 669 days based on an adjustment for PTO delay of 686 days, reduced by applicant delay of 17 days.

Applicants state that the period of patent term adjustment of 463 days for the mailing, in accordance with 37 CFR 1.703(e), of a final decision of the Board of Patent Appeals and Interferences on June 16, 2008, 463 days after March 12, 2007, the date on which a notice of appeal was filed is incorrect, as the period of patent term adjustment should be 462 days rather than 463 days.

Applicants are incorrect as 37 CFR 1.702(e) states that the period of adjustment under § 1.702(e) is the sum of the number of days, if any, in the period beginning on the date on which, as opposed to the day after the date, a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

On March 12, 2007, a notice of appeal was filed. On June 16, 2008, a final decision in favor of the applicant was mailed, 463 days after the date on which the notice of appeal was filed. Accordingly, entry of a period of 463 days of examination delay is warranted.

On February 21, 2006, a request for continued examination (RCE) was filed. On March 21, 2006, 28 days after the date the RCE was filed, a supplemental information disclosure statement (IDS) was filed.

37 CFR 1.704(c)(8) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the

following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

The IDS filed on March 21, 2006, did not include a statement in accordance with 37 CFR 1.704(d). Further, the IDS was not expressly requested by the examiner within the meaning of 37 CFR 1.704(c)(8).

Accordingly, the IDS filed on March 21, 2006 is considered a failure to engage in reasonable efforts to conclude processing or examination of an application. Entry of a period of reduction of 28 days of patent term adjustment is therefore warranted.

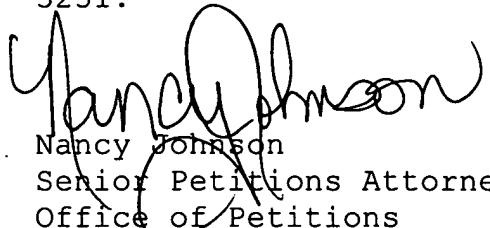
In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **six hundred forty-one (641) days** (686 days of PTO delay, reduced by 45 (17+28) days of Applicant delay).

As the instant letter was submitted to advise the Office of an error in Applicant's favor, the \$200.00 application fee under 37 CFR 1.705(b) was not required, and has not been charged.

The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Wednesday

Date: 5/13/2009
Time: 20:43:42

PALM INTRANET

PTA Calculations for Application: 10/659967

Application Filing Date:	09/11/2003	PTO Delay (PTO):	686
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	17
Post-Issue Petitions:	0	Total PTA (days):	641
PTO Delay Adjustment:	-28		

File Contents History

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109	09/15/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
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97	08/12/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
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87	04/23/2008	APPEAL AWAITING BPAI DOCKETING		
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84	02/27/2008	REPLY BRIEF NOTED BY EXAMINER		
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74	11/21/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT		
73	11/14/2007	RETURN OF UNDOCKETED APPEAL TO THE TC		
72	11/14/2007	EXAM. ANS. REVIEW COMPLETE		
71	11/06/2007	ELECTRONIC REVIEW		
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69	11/02/2007	MAIL EXAMINER'S ANSWER		
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43	03/21/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED		
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6	05/24/2004	SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC		
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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